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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in category II consultative status

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1998/4.

[15 March 1996]

EL SALVADOR, GUATEMALA AND PARAGUAY

1. In order to view the three Latin American countries that the Committee is to consider at the current session in a regional context, it should be stated that, in economic terms, the structural adjustment decade (1980-1990) in Latin America and the Caribbean was the "lost decade": per capita gross domestic product fell by 10 per cent and foreign debt continued to spiral upwards, increasing from $228 billion in 1980 to $441 billion in 1990, despite $388 billion in interest and $385 billion in debt payments during the same period. 1/ During this decade, the number of poor increased from 136 million in 1980 to 266 million in 1992, i.e. from 41 per cent to 62 per cent of the population. 2/ It is estimated that, in late 1995, Latin American public debt amounted to $600 billion, i.e. that it had increased by 17 per cent since 1993, much more rapidly than gross domestic product. 3/

2. During this period, average per capita income in many countries in the region dropped between 10 per cent and 25 per cent, 4/ but per capita consumption in the business sector increased by 16 per cent, while it fell by 25 per cent in the wage-earning sector. 5/

PARAGUAY

3. The new Constitution of Paraguay entered into force on 20 June 1992. Article 1 states that: "The Republic ... shall be established as a social State subject to the rule of law", thus indicating that the State plays an active role with regard to economic, social and cultural rights. The Constitution provides for the rights to work, to vocational training, to non-discrimination, to the protection of motherhood, to social security and to form and join trade unions, as well as for the right to strike of workers in the public and private sectors. The Constitution also provides for the right of indigenous persons to community ownership of land, which the State will make available to them free of charge (art. 63); articles 113, 114 and 115 relate to agrarian reform. The Constitution guarantees the rights to education (art. 72), health (art. 68) and social welfare (art. 69).

4. Paraguay has ratified four of the five International Labour Conventions that are regarded as basic: No. 29 on the abolition of forced labour, No. 87 on freedom of association and protection of the right to organise, No. 98 on the right to organise and to bargain collectively and No. 111 on discrimination, but not No. 138 concerning minimum age.

5. The practical implementation of the provisions of the Constitution and the above-mentioned international conventions is difficult, primarily as a result of the very backward economic and social structure inherited from the Stroessner dictatorship. The majority of the population has a standard of living somewhere between poverty and extreme poverty and a small minority lives in opulence.

6. For example, 50 per cent of the population of Paraguay is composed of peasants and, according to the 1991 National Agricultural Census, 1 per cent of landowners hold 77 per cent of the land, while, at the other extreme, 35 per cent of small farmers own only 1 per cent of the land. Three hundred and fifty-one landowners have 9.7 million hectares (40 per cent of the total) and 114,000 peasants have 231,000 hectares (1 per cent of the total). 6/ According to independent researchers, between 100,000 and 150,000 peasant families do not have any land. Forty-one foreign companies own 36.3 per cent of the territory and another 42 per cent belongs to large Paraguayan landowners. 7/ As a result of this situation and the occupation of land by peasants, peasants have been violently thrown out by the armed forces and their dwellings, possessions and crops burned. 8/ On 2 May 1994, during a national general strike, the peasant trade union leader, Sebastián Larrosa, was killed in the town of Tacuara. On 7 September 1995, during a peasant demonstration in the town of Santa Bárbara (San Pedro), a young peasant, Pedro Giménez, was killed by the police. Consequently, the National Federation of Workers and the United Workers' Union called for a solidarity strike with the peasants on 25 September 1995.

7. The minimum monthly wage in August 1994 was 379,500 guaraníes, i.e. $198. 9/ Social security coverage is still stagnant, with a slight downward tendency: it amounted to 19.5 per cent of the total population in 1980 and to 18.3 per cent in 1990. 10/ The government report submitted to the Committee gives a figure for 1992 of 21.2 per cent of the population covered by social security (p. 41).

8. The Latin American Workers' Confederation and the International Confederation of Free Trade Unions informed the Freedom of Association Committee of the International Labour Organization of various violations of trade union freedoms in three enterprises: Empresa Cafetera Eximpora S.A., Teledifusors a Paraguaya and Paraguay Refrescos S.A., which has the Coco Cola concession (outlawing strikes, dismissing trade union leaders, death threats, police brutality, etc.). With regard to Eximpora, the ICFTU also reported excessive working hours, the employment of children and elderly persons, wages below the minimum wage, etc. The Freedom of Association Committee concluded that there were serious violations of trade union rights. 11/

9. There are labour standards which are contrary to rights provided for in the Constitution. For example, articles 358 (c) and 360 of the Labour Code prohibit strikes in public services that the Government regards as essential; articles 284 and 291 of the Code of Labour Procedure make arbitration compulsory in collective labour disputes and authorize the dismissal of workers who stop work during the arbitration process. 12/ 13/ Act No. 200 of 1970, which limited the trade union rights of workers in the public sector, has been amended and collective bargaining machinery has been established in that sector (Act No. 508 of 27 December 1994) in accordance with the Constitution.

10. Paraguay is a member of MERCOSUR (the common market treaty between Argentina, Brazil, Paraguay and Uruguay), which does not contain a social charter, but tripartite studies (Governments, employers and workers) are being carried out to draft such a charter. 14/

El SALVADOR

11. In El Salvador, as in the other countries of Central America, the economic and political influence of the United States is quite considerable and goes a long way towards determining political, economic and social trends in the countries of the region, although not in any uniform or linear way.

12. In the early 1980s, the reforms undertaken by the Government of El Salvador (nationalization of banking, agrarian reform, nationalization of foreign coffee and sugar-cane trade, tax reform) had the support of the Government of the United States, despite the latter's definite anti-State control stance. Other tax reforms that were tried in 1987, such as an attempt to increase direct taxes, brought the Government up against the powerful business sector.

13. This crisis and the need to include the Central American region in the international liberalization of markets speeded up the change of attitude of the United States Agency for International Development (USAID), the main channel of financial assistance from the United States in the region.

14. On 7 May 1987, a high-level United States mission composed, inter alia, of the Deputy Secretary of Defense, the USAID Officer-in-Charge of Central American Affairs, the Assistant Secretary of Central American Affairs in the Department of State and a member of the National Security Council

visited El Salvador to get the Salvadoran Government to agree to the implementation of specific economic policies. This led President Duarte to denounce North American pressures.

15. USAID played a major role in the development of a shift in El Salvador in favour of the economic changes desired by the United States and by the Salvadoran business sector, such as the financing of the Salvadoran Foundation for Economic and Social Development (FUSADES). When the ARENA party took over the Government in 1989, at least 17 members of FUSADES became part of the economic cabinet. 15/ 16/

16. The new economic guidelines favoured the financial and commercial sectors and promoted foreign investments, drawing attention to the comparative advantages of disciplined and very cheap Salvadoran labour, as may be seen from a FUSADES flyer which reads as follows: "El Salvador offers you quality, industriousness and reliability. Rosa Martínez makes clothing for North American markets on her sewing machine in El Salvador. You can hire her for 33 cents an hour. Rosa is not only picturesque. She and her co-workers are known for their industriousness, reliability and quickness to learn".

17. On the basis of these guidelines, textile exports to the United States increased by 3,800 per cent from 1985 to 1994, while the real wages of workers dropped by 53 per cent (see attached table). The attached table also contains a comparative analysis of wages in the garment industry in El Salvador and wages in the same industry in other countries.

18. The San Bartolo free zone, where the majority of enterprises are transnational, is a specific example of the implementation of anti-social policies derived from these economic guidelines. Eighty-four per cent of the employees in the free zone are women and preference in hiring is given to young unmarried woman aged between 18 and 25 years who must show proof that they are not pregnant. The jobs do not last long because the women are dismissed when they reach a certain age. The work is very intense and there is virtually no trade union activity, since the enterprises do not hire persons with trade union experience and attempts to unionize are punished. 17/ The International Confederation of Free Trade Unions (ICFTU) considers that "It is [also] in the free zones of the Dominican Republic, Honduras, Mexico and El Salvador that trade unionists are the most repressed, with employers vying to outdo one another in their ingenuity and ferocity in preventing workers from organizing themselves". 18/

19. The amendments to the Labour Code that entered into force on 22 May 1994 contain some positive elements, but El Salvador is not a party to any of the five International Labour Conventions regarded as basic (Nos. 29, 87, 98, 111 and 138).

GUATEMALA

20. For a general view of the situation of economic, social and cultural rights in Guatemala, we refer to this year's report (E/CN/4/1996/15) by the independent expert appointed by the Secretary-General of the United Nations, Mrs. Mónica Pinto, and to the 1994 and 1995 reports.

21. According to the non-governmental organization, Human Rights Commission of Guatemala, which cites various sources (ECLAC, UNICEF, WHO, etc.), 64 per cent of the urban population and 72 per cent of the rural population live in poverty, with an average income of $60 per month; 24 per thousand of children die in the first year of life and 100 per thousand before the fifth year; 50 per cent of the population does not have health services, with a much higher percentage in rural areas; and between 43 and 53 per cent of the population is illiterate, while 75 per cent is functionally illiterate. 19/

22. When the case of Guatemala was discussed by the Committee on the Application of Standards at the International Labour Conference, the representatives of the ILO Workers' Group said that "grave problems existed in the lack of conformity of the legislation with the Convention (No. 87). Furthermore, the Freedom of Association Committee had identified flagrant violations of freedom of association in practice: difficulties unions faced in organizing and operating; dozens of cases of threats, aggression, assassinations, disappearances and dismissals of union activists. Paramilitary groups, police and directors of national and international enterprises were clearly responsible, but were allowed to act with impunity. The sectors most affected were agriculture, forestry and the free enterprise zones". The Workers' members also emphasized the seriousness of the problems which were highlighted in the report of the Committee of Experts on the Application of Conventions and Recommendations and which hamper the establishment of trade unions, the free election of representatives and the exercise of the right to strike. The Employers' members said that they agreed with most of the points made by the Workers' members. 20/

23. Guatemala is a party to the five International Labour Conventions regarded as basic (Nos. 29, 87, 98, 111 and 138).

24. As in El Salvador, labour and trade union rights are systematically violated in the free zones, where transnational enterprises are set up in order to ensure the availability of cheap and disciplined labour. As in the case of FUSADES in El Salvador, there are institutions such as the Free Enterprise Board and the Union of Exporters of Non-Traditional Commodities which are financed by the United States Agency for International Development (USAID) and which advocate such policies. 21/

Notes

1/ Eric and Fernando Calcagno, "El Universo neoliberal", Alianza Editorial, Madrid-Buenos Aires, 1995, pp. 323 and 327.

2/ Figures and projections prepared at the Second Regional Conference on Poverty in Latin America and the Caribbean, Quito, Ecuador, 1990.

3/ Diario Clarín, Buenos Aires, 24 December 1995.

4/ UNICEF, The State of the World's Children 1989.

5/ UNRISD, The IMF and the South: The Social Impact of Crisis and Adjustment, Dharam Ghai, editor, 1991, p. 21.

6/ National Agricultural Census, in Labour Report No. 87, Documentation and Study Centre, Asunción, Paraguay, March 1994.

7/ Palau, Tomás, and others, BASE/IS, "Dictadura, corrupción y transición", Asunción, Paraguay, June 1990.

8/ Americas Watch, "Paraguay, nuevos brotes de violencia en conflictos por la tierra", New York, February 1991.

9/ "Salario mínimo mensual en el Cono Sur de América Latina", in Revista Relasur, No. 4, ILO, Montevideo, 1994, p. 242.

10/ María Cristina Guillén, "Seguro social en Paraguay", in Labour Report No. 87, Documentation and Study Centre, Asunción, Paraguay, March 1994.

11/ ILO, 300th report of the Freedom of Association Committee, cases Nos. 1811 and 1816, November 1995.

12/ Latin American Commission for the Rights and Freedoms of the Workers and Peoples (CLADEHLT), "Los derechos del trabajador latinoamericano. Agresiones y desafíos", 1994 report, p. 21.

13/ International Labour Conference, eighty-third session, 1996. Report of the Committee of Experts on the Application of Conventions and Recommendations, Convention No. 87, Paraguay.

14/ A MERCOSUR Social Charter? Technical Workshop on the MERCOSUR Charter of Fundamental Workers' Rights. ILO-Relasur, Montevideo, 1994.

15/ Alexander Segovia, "La experiencia del ajuste en El Salvador", in "Los pequeños paises de América Latina en la hora neoliberal", Gerónimo de Sierra, coordinator. National Autonomous University of Mexico, UNRISD, National Heredia University of Costa Rica, Editorial Nueva Sociedad, Venezuela, 1994.

16/ Gerardo Timossi, "Centroamérica, Deuda externa y ajuste estructural. Las transformaciones económicas de la crisis". Editorial Departamento Ecuménico de Investigaciones - Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES), San José, Costa Rica, 1989.

17/ Guillermo Pavez Hermosilla, "Industrias de maquila, zonas procesadoras de exportación y empresas multinacionales en Costa Rica y El Salvador", International Labour Office, Multinational Corporations Programme. Working Paper No. 48, 1987.

18/ ICFTU, Free Labour World, No. 6, June 1995.

19/ Human Rights Commission of Guatemala, report to the United Nations General Assembly, New York, November 1995.

20/ International Labour Conference, eighty-second session, June 1995, Committee on the Application of Standards, ninth sitting, 12 June 1995. C.App./PVS.8 and 9.

21/ Gerardo Timossi, "Centroamérica, deuda externa y ajuste estructural. Las transformaciones económicas de la crisis". Editorial Departamento Ecuménico de Investigaciones - Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES), San José, Costa Rica, 1989, p. 85.